No. 82008-2

FAIRHURST, J. (dissenting) — According to the majority, James Frank Jaime's due process right to the presumption of innocence was violated when his trial was held in a permanent courtroom in the county jail building (jail building courtroom). I cannot agree. I would hold that the practice of conducting trials in a jail building courtroom is not inherently prejudicial, and I would uphold Jaime's conviction for second degree murder.

To reach today's holding, the majority first relies on cases involving shackles and prison garb. While there is no doubt that it is inherently prejudicial to shackle a defendant during trial, *State v. Finch*, 137 Wn.2d 792, 844, 846, 975 P.2d 967 (1999), or force a defendant to wear prison garb during trial, *Estelle v. Williams*, 425 U.S. 501, 502, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976), conducting a trial in a permanent courtroom in the jail building does not raise the same constitutional concerns. Shackling can be of such a physical restraint as to deprive a defendant of

the right to appear and defend himself or herself. *State v. Williams*, 18 Wash. 47, 51, 50 P. 580 (1897); Wash. Const. art. I, § 22. Shackling is also a very visible restraint[1] that indicates to the jury the defendant is so dangerous as to not be trusted even by the judge. *Finch*, 137 Wn.2d at 845. Similarly, a defendant who is forced to wear prison garb is distinctly marked as a dangerous or guilty person. *See Estelle*, 425 U.S. at 504-05.

But Jaime's entitlement "to the physical indicia of innocence" is limited; it confers the "right of the defendant to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man," not to choose a particular courtroom. *Finch*, 137 Wn.2d at 844. A courtroom is a location, not an accoutrement.[2] Because a courtroom does not serve as an identifier, it does not possess the inherently prejudicial power of a shackle or a prison uniform. While

[1]There are some physical restraints that can be worn under the defendant's clothing without being visible to the jury. In cases where such restraints were used, Washington courts have found that there was no prejudice to the defendant because a jury must be aware of a restraint to be prejudiced by it. *See, e.g., State v. Hutchinson*, 135 Wn.2d 863, 869-70, 888, 959 P.2d 1061 (1998) (leg brace); *State v. Monschke*, 133 Wn. App. 313, 336-37, 135 P.3d 966 (2006) (stun belt).

[2]The Oregon Supreme Court found that holding a trial in a maximum security prison was inherently prejudicial because it would "'enfold[] the defendant in prison accouterments [sic].'" *State v. Cavan*, 337 Or. 433, 446, 98 P.3d 381 (2004). However, *Cavan* is easily distinguishable--*Cavan* deals with a maximum security prison rather than a jail, *id.* at 445, the jurors in *Cavan* had to undergo significant extra security precautions as compared to those at the courthouse, *id.* at 436-37, and the crime in question in *Cavan* allegedly took place in the same prison where the trial was held, *id.* at 448.

some aspects of a court setting may cause prejudice in certain cases, there simply is no basis to conclude that the practice of conducting trials in a jail building courtroom is always and inherently prejudicial.

To bolster its notion of inherent prejudice, the majority, at page 4, cites language depicting the courtroom as "an important element in the constitutional conception of trial, contributing a dignity essential to 'the integrity of the trial process.'" *Estes v. Texas*, 381 U.S. 532, 561, 85 S. Ct. 1628, 14 L. Ed. 2d 543 (1965) (Warren, C.J., concurring) (quoting *Craig v. Harney*, 331 U.S. 367, 377, 67 S. Ct. 1249, 91 L. Ed. 1546 (1947)). While this proposition is true, *Estes* is inapposite. The defendant in *Estes* was a "notorious character" whose courtroom proceedings were broadcast live on television and radio. *Id*. at 536. Describing the scene, the Court noted that "at least 12 cameramen were engaged in the courtroom throughout the hearing taking motion and still pictures and televising the proceedings. Cables and wires were snaked across the courtroom floor, three microphones were on the judge's bench and others were beamed at the jury box and the counsel table." *Id*. Because the media caused "considerable disruption" of the defendant's courtroom proceedings, the Court concluded that the defendant had been robbed of the "judicial serenity and calm to which [he] was entitled." *Id*.

No such concerns were implicated here. According to the record, the jail building courtroom was a permanent courtroom used to conduct court business, and the room itself appeared like any other courtroom. Like the courtrooms in the courthouse, it was specifically designed for jury trials and was windowless. There were no disruptions during trial. In short, there was no interference with Jaime's right to the "solemn decorum" of an orderly trial procedure and no violation of his due process rights. *Id*. at 548.

Finally, the majority contends that there was a "'wider range of inferences that a juror might reasonably draw'" from the courtroom's location in the jail building. Majority at 5 (quoting *Holbrook v. Flynn*, 475 U.S. 560, 569, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986)). The majority argues this presented an "'unacceptable risk'" that "'impermissible factors'" would come into play. *Id*. (quoting *In re Pers. Restraint of Woods*, 154 Wn.2d 400, 417, 114 P.3d 607 (2005) (citing *Holbrook*, 475 U.S. at 570)). While the majority uses *Holbrook* to support its contention, a closer analysis of the case compels the opposite conclusion. In *Holbrook*, the United States Supreme Court determined that the defendant received a fair trial, even though the Court's usual security force was bolstered by four uniformed state troopers sitting in the front row of the spectator section. *Holbrook*,

475 U.S. at 562. The Court focused its analysis on the wider inferences that could be drawn from the troopers' presence, but it specifically highlights *permissible* inferences. According to the Court:

> While shackling and prison clothes are unmistakable indications of the need to separate a defendant from the community at large, the presence of guards at a defendant's trial need not be interpreted as a sign that he is particularly dangerous or culpable. Jurors may just as easily believe that the officers are there to guard against disruptions emanating from outside the courtroom or to ensure that tense courtroom exchanges do not erupt into violence. Indeed, it is entirely possible that jurors will not infer anything at all from the presence of the guards. If they are placed at some distance from the accused, security officers may well be perceived more as elements of an impressive drama than as reminders of the defendant's special status.

Id. at 569. *Holbrook* actually undermines the majority's contention--it stands for the proposition that if jurors could reasonably infer explanations for additional security measures other than the defendant's dangerousness or guilt, the security measures do not prejudice the defendant, as long as there is not "'an unacceptable risk'" that "'impermissible factors com[e] into play.'" *Id.* at 570 (quoting *Estelle*, 425 U.S. at 505).

Here, the trial court specifically instructed the jury that the trial was being held in the jail building courtroom for administrative reasons.[3] Like the jurors in the

[3]The majority's disapproval of the trial court's instruction is somewhat unfair. The trial court did consider security concerns, but it also considered the convenience of holding the trial in

Holbrook trial, it is "entirely possible" (and even likely) that the jurors in Jaime's trial "[did] not infer anything at all from" their particular courtroom location. *Id.* at 569.

There is also nothing to indicate that the jurors in Jaime's trial were subjected to any "'impermissible factors.'" *Id*. at 570 (quoting *Estelle*, 425 U.S. at 505). Jurors were required to submit to security screenings, and women were required to leave their purses outside the courtroom, but these requirements do not differ substantially from those that occur in many courtrooms.[4] There is simply no evidence to suggest that the trial venue, by itself, was inherently prejudicial.

The inherent prejudice caused by compelling a defendant to wear shackles or prison garb during trial comes from the fact that the defendant is forced to bear "'unmistakable indications' of dangerousness or guilt." *Finch*, 137 Wn.2d at 845 (quoting *Holbrook*, 475 U.S. at 568-69). This is not true of a permanent courtroom

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the jail building courtroom. According to the trial court, it was much easier to usher the jury in and out of the jail building courtroom because the jury room was just across the hall from the courtroom. Because the trial court based its decision partly on administrative convenience, its statement to the jury was not "false." Majority at 10 n.5.

[4]The courtroom at the Yakima County Courthouse is among those with such requirements. *See* Frequently Asked Questions About Jury Duty, Yakima County Clerk 2, http://www.yakimacounty.us/clerk/Web04/Jury/Frequently%20Asked%20Questions%20converted%20pdf.pdf (last visited May 25, 2010) ("Everyone entering the Courthouse may be required to go through a metal detector. Purses, briefcases, bags and other items carried into the Courthouse may also be searched.").

inside the jail building. The courtroom where Jaime's trial was held was, in all relevant aspects, comparable or identical to a courtroom in the courthouse. The jury was provided with a reasonable explanation for the venue that did not prejudice the defendant, and the trial proceeded without disruption. On the record before us, there is simply no indication that Jaime was denied the presumption of innocence. I respectfully dissent.

AUTHOR:
Justice Mary E. Fairhurst

WE CONCUR:
Chief Justice Barbara A. Madsen

Justice James M. Johnson